

B. JURISDICTION AND VENUE

4. Dell admits that this Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and § 1338(a), and that venue is proper in this District pursuant to 28 U.S.C. § 1391(b)-(c) and § 1400(b), but denies that it has committed acts of infringement in this District, that it will commit any acts of infringement in this District, or that plaintiff is entitled to monetary and injunctive relief. Dell admits that it has sold its products in this District, and admits that MicroUnity purports to bring an action for patent infringement under the Patent Laws of the United States, 35 U.S.C. § 101 *et seq.* Dell denies the remaining allegations of paragraph 4. Dell specifically denies that the action has any meritorious basis in fact or law. As to the allegations against co-defendant Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

C. ALLEGED INFRINGEMENT OF U.S. PATENT NO. 5,742,840

5. Dell admits that United States Patent No. 5,742,840 (“the ‘840 patent”) on its face identifies MicroUnity as the assignee of the patent, recites an issue date of April 21, 1998, and bears the title “General Purpose, Multiple Precision Parallel Operation, Programmable Media Processor.” Dell denies that the ‘840 patent was duly and legally issued. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning MicroUnity’s purported rights and interest in the ‘840 patent and, therefore, denies these allegations. Dell denies all of the remaining allegations contained in paragraph 5 of the Complaint.

6. Dell denies each and every allegation of paragraph 6 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations

against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

7. Dell denies each and every allegation contained in paragraph 7 of the Complaint, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement.

8. Dell denies each and every allegation of paragraph 8 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

9. Dell denies each and every allegation of paragraph 9 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

D. ALLEGED INFRINGEMENT OF U.S. PATENT NO. 5,794,060

10. Dell admits that United States Patent No. 5,794,060 ("the '060 patent") on its face identifies MicroUnity as the assignee of the patent, recites an issue date of August 11, 1998, and bears the title "General Purpose, Multiple Precision Parallel Operation, Programmable Media Processor." Dell denies that the '060 patent was duly and legally issued. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning MicroUnity's purported rights and interest in the '840 patent and, therefore, denies these allegations. Dell denies all of the remaining allegations contained in paragraph 10 of the Complaint.

11. Dell denies each and every allegation of paragraph 11 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

12. Dell denies each and every allegation contained in paragraph 12 of the Complaint, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement.

13. Dell denies each and every allegation of paragraph 13 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

14. Dell denies each and every allegation of paragraph 14 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

E. ALLEGED INFRINGEMENT OF U.S. PATENT NO. 5,794,061

15. Dell admits that United States Patent No. 5,794,061 (“the ‘061 patent”) on its face identifies MicroUnity as the assignee of the patent, recites an issue date of August 11, 1998, and bears the title “General Purpose, Multiple Precision Parallel Operation, Programmable Media Processor.” Dell denies that the ‘061 patent was duly and legally issued. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning

MicroUnity's purported rights and interest in the '061 patent and, therefore, denies these allegations. Dell denies all of the remaining allegations contained in paragraph 15 of the Complaint.

16. Dell denies each and every allegation of paragraph 16 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

17. Dell denies each and every allegation contained in paragraph 17 of the Complaint, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement.

18. Dell denies each and every allegation of paragraph 18 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

19. Dell denies each and every allegation of paragraph 19 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

F. ALLEGED INFRINGEMENT OF U.S. PATENT NO. 5,809,321

20. Dell admits that United States Patent No. 5,809,321 (“the ‘321 patent”) on its face identifies MicroUnity as the assignee of the patent, recites an issue date of September 15, 1998, and bears the title “General Purpose, Multiple Precision Parallel Operation, Programmable Media Processor.” Dell denies that the ‘321 patent was duly and legally issued. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning MicroUnity’s purported rights and interest in the ‘321 patent and, therefore, denies these allegations. Dell denies all of the remaining allegations contained in paragraph 20 of the Complaint.

21. Dell denies each and every allegation of paragraph 21 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

22. Dell denies each and every allegation contained in paragraph 22 of the Complaint, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement.

23. Dell denies each and every allegation of paragraph 23 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

24. Dell denies each and every allegation of paragraph 24 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing,

infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

G. ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,584,482 B1

25. Dell admits that United States Patent No. 6,584,482 B1 (“the ‘482 patent”) on its face identifies MicroUnity as the assignee of the patent, recites an issue date of June 24, 2003, and bears the title “Multiplier Array Processing System With Enhanced Utilization At Lower Precision.” Dell denies that the ‘482 patent was duly and legally issued. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning MicroUnity’s purported rights and interest in the ‘482 patent and, therefore, denies these allegations. Dell denies all of the remaining allegations contained in paragraph 25 of the Complaint.

26. Dell denies each and every allegation of paragraph 26 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

27. Dell denies each and every allegation contained in paragraph 27 of the Complaint, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement.

28. Dell denies each and every allegation of paragraph 28 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations

against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

29. Dell denies each and every allegation of paragraph 29 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

H. ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,643,765 B1

30. Dell admits that United States Patent No. 6,643,765 B1 ("the '765 patent") on its face identifies MicroUnity as the assignee of the patent, recites an issue date of November 4, 2003, and bears the title "Programmable Processor With Group Floating Point Operations." Dell denies that the '765 patent was duly and legally issued. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning MicroUnity's purported rights and interest in the '765 patent and, therefore, denies these allegations. Dell denies all of the remaining allegations contained in paragraph 30 of the Complaint.

31. Dell denies each and every allegation of paragraph 31 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

32. Dell denies each and every allegation contained in paragraph 32 of the Complaint, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement.

33. Dell denies each and every allegation of paragraph 33 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

34. Dell denies each and every allegation of paragraph 34 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

I. ALLEGED INFRINGEMENT OF U.S. PATENT NO. 6,725,356 B2

35. Dell admits that United States Patent No. 6,725,356 B2 (“the ‘356 patent”) on its face identifies MicroUnity as the assignee of the patent, recites an issue date of April 20, 2004, and bears the title “System With Wide Operand Architecture, And Method.” Dell denies that the ‘356 patent was duly and legally issued. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning MicroUnity’s purported rights and interest in the ‘356 patent and, therefore, denies these allegations. Dell denies all of the remaining allegations contained in paragraph 35 of the Complaint.

36. Dell denies each and every allegation of paragraph 36 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

37. Dell denies each and every allegation contained in paragraph 37 of the Complaint, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement.

38. Dell denies each and every allegation of paragraph 38 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

39. Dell denies each and every allegation of paragraph 39 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

J. ALLEGED INFRINGEMENT OF U.S. PATENT NO. 5,630,096

40. Dell admits that United States Patent No. 5,630,096 ("the '096 patent") on its face identifies MicroUnity as the assignee of the patent, recites an issue date of May 13, 1997, and bears the title "Controller For A Synchronous DRAM That Maximizes Throughput By Allowing Memory Requests And Commands To Be Issued Out Of Order." Dell denies that the '096 patent was duly and legally issued. Dell is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning MicroUnity's purported rights and interest in the '096 patent and, therefore, denies these allegations. Dell denies all of the remaining allegations contained in paragraph 40 of the Complaint.

41. Dell denies each and every allegation of paragraph 41 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing,

infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

42. Dell denies each and every allegation contained in paragraph 42 of the Complaint, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement.

43. Dell denies each and every allegation of paragraph 43 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

44. Dell denies each and every allegation of paragraph 44 to the extent that they relate to Dell or the activities or products of Dell, and specifically denies any wrongdoing, infringement, inducement of infringement, or contribution to infringement. As to the allegations against Intel, no response from Dell is required, but any allegation not expressly admitted by Dell is denied.

K. JURY DEMAND

45. Dell does not object to a trial by jury on all issues so triable, but otherwise objects to MicroUnity's demand for a jury trial on "all issues."

L. RESPONSE TO PLAINTIFF MICROUNITY'S PRAYER FOR RELIEF

Dell denies that MicroUnity is entitled to be awarded any of the relief sought in Plaintiff's prayer for relief against Dell, its agents, servants, officers, directors, employees, joint venturers and all persons acting in concert with Dell. Dell has not directly, indirectly, contributorily and/or by inducement, literally and/or by the doctrine of equivalents infringed,

willfully or otherwise, United States Patent Nos. 6,725,356 B2 (“the ‘356 patent”), 5,742,840 (“the ‘840 patent”), 5,794,060 (“the ‘060 patent”), 5,794,061 (“the ‘061 patent”), 5,809,321 (“the ‘321 patent”), 6,584,482 B1 (“the ‘482 patent”), 6,643,765 B1 (“the ‘765 patent”), and 5,630,096 (“the ‘096 patent”) (collectively, the “patents in suit”). Plaintiffs are not entitled to recover statutory damages, compensatory damages, an accounting, injunctive relief, costs, fees, interest, or any other type of recovery from Dell. MicroUnity’s prayer should, therefore, be denied in its entirety and with prejudice, and MicroUnity should take nothing therefrom.

AFFIRMATIVE AND OTHER DEFENSES

Dell asserts the following affirmative defenses and reserves the right to amend its answer as additional information becomes available:

A. FIRST DEFENSE

46. The Complaint fails to state a claim upon which relief can be granted because Dell has not performed any act or thing and is not proposing to perform any act or thing in violation of any rights validly belonging to Plaintiff.

B. SECOND DEFENSE

47. Dell does not infringe and has not infringed, either directly, contributorily, or by inducement, any claim of the patents in suit, either literally or under the doctrine of equivalents, nor willfully or otherwise.

C. THIRD DEFENSE

48. Each and every claim of the patents in suit is invalid and void for failure to comply with the requirements of Title 35, United States Code, including, but not limited to, Sections 102, 103 and 112.

D. FOURTH DEFENSE

49. MicroUnity is barred by 35 U.S.C. § 287 from recovering any damages for any alleged infringement of the patents in suit that occurred prior to the filing of the Complaint.

E. FIFTH DEFENSE

50. The '840 patent, '060 patent, '061 patent, '321 patent, and '096 patent are each unenforceable by reason of estoppel.

F. SIXTH DEFENSE

51. Microunity's claims for damages derived from each of the '840 patent, '060 patent, '061 patent, '321 patent, and '096 patent are barred in whole or in part by the doctrine of laches.

G. SEVENTH DEFENSE

52. Microunity's patent infringement claims are barred in whole or in part by the doctrine of prosecution laches.

H. EIGHTH DEFENSE

'765 and '356 Patents

53. The '765 Patent and '365 Patent are unenforceable because one or more individuals associated with the filing and/or prosecution of them intentionally deceived the Patent Office to make claims of domestic priority to applications for two earlier Microunity patents, U.S. Patent Nos. 5,822,603 (filed 11/22/96) and 5,742,840 (filed 8/16/95).

54. The '765 and '356 Patent applications were filed on March 24, 2000, and August 2, 2001, respectively. The '765 and '356 Patent applications as originally filed claimed domestic priority to only the application for U.S. Patent No. 6,295,599 (filed 8/24/99) and the application

for U.S. Patent No. 6,006,318 (filed 10/13/98). In turn, the application for the '599 patent similarly claimed priority to only the application for the '318 patent. As originally filed, the '765, '356, and '599 Patents did not claim priority to the earlier filed '603 patent application or '840 patent application. As such, the earliest priority date that the '765, '356, and '599 Patents could be entitled to was October 13, 1998, the date the '318 Patent application was filed.

55. It is clear that Microunity did not originally intend to claim that the '765, '356, and '599 Patents were entitled to priority of the '603 and '840 Patents. For example, in each of these application, Microunity specifically chose to state that that the '840 Patent was "related" rather than make a claim of priority. Additionally, the '765 and '356 Patents as originally filed (as well as the '599 Patent) were directed to systems for improving the performance of general purpose processors by expanding at least one source operand to a width greater than the width of either the general purpose register or data path width. Such a system is not disclosed in the '603 or the '840 patent applications. Indeed, Microunity clearly distinguished between the inventions covered by the '765 and the '356 Patents and the inventions covered by the earlier '840 and '603 Patents. For example, Microunity specifically described the '603 and '840 patents in the "Background of the Invention" section of the '765, '356, and '599 Patent applications as adding classes of instructions that "use the contents of general purpose registers as data path sources, partition the operands into symbols of a specified size, perform operations in parallel, catenate the results and place the catenated results into a general-purpose register." The "Background of the Invention" section of the '765, '356, and '599 patent applications went on to state that while the "foregoing patents offered significant improvements . . . other improvements are possible." Similarly, during prosecution of the '599 Patent, Microunity argued that the claims of the '599 were patentable over the '840 Patent.

56. In March 2003, some three years after it filed the applications for the '765 and '356 patent, Microunity decided to change the direction of the '765 and '356 patent applications. Microunity submitted substitute specifications and submitted claims that cover systems that Microunity itself argues are disclosed by the earlier '603 and '840 patent applications, instead of claims that cover systems having "at least one source operand to a width greater than the width of either the general purpose register or data path width." However, PCT application WO 97/07450, which is a counterpart to the '840 Patent application, was published in February 1997, more than one year before the earliest priority date that claims of the '765 and '356 Patents could be entitled to, and thus constituted a statutory bar under section 102(b) of the Patent Law. This PCT publication thus invalidates the claims of the '765 and '356 Patents to the same extent that Microunity now claims they are entitled to priority of the '840 Patent.

57. In an attempt to overcome this fatal problem, Microunity amended the '765 and '356 Patent applications to claim priority to the earlier '603 and '840 Patent applications. Microunity submitted a declaration claiming that the failure to claim priority for the '356 Patent was "unintentional," even though it is clear that the failure to claim priority earlier was intentional. Microunity also petitioned the Patent Office to issue a certificate of correction for the already issued '599 Patent to make it claim priority to the earlier '603 and '840 Patent applications, claiming that the "correction requested by the Patentee is an error of a clerical nature and/or a mistake of minor character that occurred in good faith" even though it is clear that Microunity originally did not intend to claim priority to the earlier '603 and '840 Patent applications for the '599 Patent application and its failure to do so was not simply a "mistake." Microunity also sought this certificate of correction even though it knew that none of the claims of the '599 Patent were entitled to priority of the earlier '603 and '840 Patent applications

because they were all directed to "wide operands," which were not disclosed by the '603 and '840 Patent applications. Microunity's attempt to obtain new claims that are clearly invalid in view of Microunity's own admissions through after-the-fact alterations of its priority claims is inequitable conduct that renders the '765 and '356 patents unenforceable.

'096 Patent

58. One or more persons substantively involved in the prosecution of the '096 patent committed inequitable conduct by arguing that the prior art did not disclose the concept that SDRAM operations that do not specifically involve data transfer may be overlapped with operations involve data transfer. This argument was made with the intent to deceive the United States Patent and Trademark Office ("USPTO"). The concept of overlapping such SDRAM commands was well known, and described in data sheets for the Micron SDRAM part cited in the specification of the '096 patent and other publications. Consequently, one or more persons substantively involved in the prosecution of the '096 patent committed inequitable conduct during the prosecution of the '096 patent.

59. One or more persons substantively involved in the prosecution of the '096 patent further committed inequitable conduct by withholding material portions of a reference with the intent to deceive the USPTO. In particular, the Applicants disclosed only the cover page and pp. 33 and 37 of the Micron Semiconductor, Inc. Spec Sheet MT48LC2M8S1 (1993) ("Micron Spec Sheet"). As noted above, Micron data sheets for this SDRAM part disclosed the concept of overlapping commands that do not involve data transfer with commands that involve data transfer to increase the throughput of memory requests to the SDRAM. On information and belief, portions of the Micron Spec Sheet withheld by applicants disclosed this concept and were withheld with the intent to deceive the USPTO. Consequently, one or more persons

substantively involved in the prosecution of the '096 patent committed inequitable conduct during the prosecution of the '096 patent.

60. One or more persons substantively involved in the prosecution of the '096 patent also committed inequitable conduct by filing claims that were known to the inventors to be unpatentable with an intent to deceive the USPTO. In particular, one or more of the alleged inventors of the '096 patent knew that the SDRAM controller design disclosed in the '096 patent was not an invention, but nevertheless submitted an application for a patent claiming the design. Further, the fact that one or more of the alleged inventors did not consider the design to be an invention is a material fact that was not disclosed to the USPTO with an intent to deceive. Consequently, one or more persons substantively involved in the prosecution of the '096 patent committed inequitable conduct during the prosecution of the '096 patent. See MU0089073-MU0089107.

61. One or more persons substantively involved in the prosecution of the '096 patent committed inequitable conduct by failing to disclose to the USPTO, with an intent to deceive, the fact that the claims of the '096 patent were not enabled by the structure disclosed. In particular, all of the claims of the '096 patent require "maximizing throughput" (or some grammatical variant thereof) to an SDRAM. One or more of the inventors knew that doing so required knowing in advance the instruction stream to be optimized, and that a limited lookahead (2, 3, or 4) simplified the problem but did not maximize throughput. By not disclosing this lack of enablement, with an intent to deceive the USPTO, the applicants committed inequitable conduct during the prosecution of the '096 patent. See MU0089073-MU0089107.

62. One or more persons substantively involved in the prosecution of the '096 patent committed inequitable conduct by failing to disclose to the USPTO, with an intent to deceive,

literature containing numerous "good" algorithms for maximizing throughput. In particular, one or more of the alleged inventors of the '096 patent knew that the literature contained numerous good algorithms for maximizing throughput, but was of the view that none of the good algorithms seemed simple enough for hardware implementation. These algorithms, and the literature containing them, were withheld from the USPTO with an intent to deceive. Consequently, one or more persons substantively involved in the prosecution of the '096 patent committed inequitable conduct during the prosecution of the '096 patent. See MU0089073-MU0089107.

I. NINTH DEFENSE

63. Microunity's claims for patent infringement are barred because, by the assertion of patents in this lawsuit that it knows to be invalid and/or unenforceable, Microunity comes to the Court with unclean hands.

* * *

COUNTERCLAIMS

Dell alleges in accordance with Federal Rules of Civil Procedure 13 and 20 against MicroUnity:

64. Defendant Dell is a Delaware corporation with a principal place of business in Round Rock, Texas.

65. On information and belief, Plaintiff MicroUnity is a California corporation with its principal place of business in Santa Clara, California.

66. These Counterclaims arise under the Declaratory Judgment Act, 28 U.S.C. § 2201 *et seq.*, and the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

67. This Court has subject matter jurisdiction over these Counterclaims pursuant to 28 U.S.C. §§ 1331 and 1338 in combination with 28 U.S.C. §§ 2201 and 2202. An actual

controversy exists under the Declaratory Judgment Act because MicroUnity has asserted and is asserting infringement of the patents in suit by Dell and Dell denies those assertions.

COUNT ONE - U.S. PATENT NO. 5,742,840

A. Declaration of Noninfringement

68. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 67 as if set forth in full herein.

69. An actual and justiciable controversy exists between Dell and MicroUnity with respect to the noninfringement of the '840 patent. Absent a declaration of noninfringement, MicroUnity will continue to wrongfully assert the '840 patent against Dell, and thereby cause Dell irreparable injury and damage.

70. Dell has not infringed the '840 patent, either directly or indirectly, literally or under the doctrine of equivalents, or willfully, and is entitled to a declaration to that effect.

71. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

B. Declaration of Invalidity

72. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 71 as if set forth in full herein.

73. An actual controversy exists between Dell and MicroUnity concerning the validity of the '840 patent by virtue of MicroUnity's assertion of infringement of that patent by Dell, which assertion Dell denies.

74. The '840 patent is invalid under the provisions of Title 35, United States Code, including, *inter alia*, Sections 102, 103, and/or 112 thereof, and Dell is entitled to a declaration to that effect.

75. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

COUNT TWO - U.S. PATENT NO. 6,725,356 B2

A. Declaration of Noninfringement

76. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 75 as if set forth in full herein.

77. An actual and justiciable controversy exists between Dell and MicroUnity with respect to the noninfringement of the '356 patent. Absent a declaration of noninfringement, MicroUnity will continue to wrongfully assert the '356 patent against Dell, and thereby cause Dell irreparable injury and damage.

78. Dell has not infringed the '356 patent, either directly or indirectly, literally or under the doctrine of equivalents, or willfully, and is entitled to a declaration to that effect.

79. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

B. Declaration of Invalidity

80. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 79 as if set forth in full herein.

81. An actual controversy exists between Dell and MicroUnity concerning the validity of the '356 patent by virtue of MicroUnity's assertion of infringement of that patent by Dell, which assertion Dell denies.

82. The '356 patent is invalid under the provisions of Title 35, United States Code, including, *inter alia*, Sections 102, 103, and/or 112 thereof, and Dell is entitled to a declaration to that effect.

83. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

C. Declaration of Unenforceability

84. Intel realleges and incorporates by reference the allegations set forth in paragraphs 1 through 83 as if set in full herein.

85. An actual controversy exists between Intel and Microunity concerning the enforceability of the '356 patent by virtue of Microunity's assertion of infringement of that patent by Intel, which assertion Intel denies.

86. The '356 patent is unenforceable due to inequitable conduct committed by Microunity as more specifically described above, and Intel is entitled to a declaration to that effect.

87. This is an exceptional case entitling Intel to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

COUNT THREE - U.S. PATENT NO. 5,794,060

A. Declaration of Noninfringement

88. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 87 as if set forth in full herein.

89. An actual and justiciable controversy exists between Dell and MicroUnity with respect to the noninfringement of the '060 patent. Absent a declaration of noninfringement, MicroUnity will continue to wrongfully assert the '060 patent against Dell, and thereby cause Dell irreparable injury and damage.

90. Dell has not infringed the '060 patent, either directly or indirectly, literally or under the doctrine of equivalents, or willfully, and is entitled to a declaration to that effect.

91. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

B. Declaration of Invalidity

92. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 91 as if set forth in full herein.

93. An actual controversy exists between Dell and MicroUnity concerning the validity of the '060 patent by virtue of MicroUnity's assertion of infringement of that patent by Dell, which assertion Dell denies.

94. The '060 patent is invalid under the provisions of Title 35, United States Code, including, *inter alia*, Sections 102, 103, and/or 112 thereof, and Dell is entitled to a declaration to that effect.

95. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

COUNT FOUR - U.S. PATENT NO. 5,794,061

A. Declaration of Noninfringement

96. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 95 as if set forth in full herein.

97. An actual and justiciable controversy exists between Dell and MicroUnity with respect to the noninfringement of the '061 patent. Absent a declaration of noninfringement, MicroUnity will continue to wrongfully assert the '061 patent against Dell, and thereby cause Dell irreparable injury and damage.

98. Dell has not infringed the '061 patent, either directly or indirectly, literally or under the doctrine of equivalents, or willfully, and is entitled to a declaration to that effect.

99. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

B. Declaration of Invalidity

100. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 99 as if set forth in full herein.

101. An actual controversy exists between Dell and MicroUnity concerning the validity of the '061 patent by virtue of MicroUnity's assertion of infringement of that patent by Dell, which assertion Dell denies.

102. The '061 patent is invalid under the provisions of Title 35, United States Code, including, *inter alia*, Sections 102, 103, and/or 112 thereof, and Dell is entitled to a declaration to that effect.

103. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

COUNT FIVE - U.S. PATENT NO. 5,809,321

A. Declaration of Noninfringement

104. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 103 as if set forth in full herein.

105. An actual and justiciable controversy exists between Dell and MicroUnity with respect to the noninfringement of the '321 patent. Absent a declaration of noninfringement, MicroUnity will continue to wrongfully assert the '321 patent against Dell, and thereby cause Dell irreparable injury and damage.

106. Dell has not infringed the '321 patent, either directly or indirectly, literally or under the doctrine of equivalents, or willfully, and is entitled to a declaration to that effect.

107. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

B. Declaration of Invalidity

108. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 102 as if set forth in full herein.

109. An actual controversy exists between Dell and MicroUnity concerning the validity of the '321 patent by virtue of MicroUnity's assertion of infringement of that patent by Dell, which assertion Dell denies.

110. The '321 patent is invalid under the provisions of Title 35, United States Code, including, *inter alia*, Sections 102, 103, and/or 112 thereof, and Dell is entitled to a declaration to that effect.

111. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

COUNT SIX - U.S. PATENT NO. 6,584,482 B1

A. Declaration of Noninfringement

112. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 114 as if set forth in full herein.

113. An actual and justiciable controversy exists between Dell and MicroUnity with respect to the noninfringement of the '482 patent. Absent a declaration of noninfringement, MicroUnity will continue to wrongfully assert the '482 patent against Dell, and thereby cause Dell irreparable injury and damage.

114. Dell has not infringed the '482 patent, either directly or indirectly, literally or under the doctrine of equivalents, or willfully, and is entitled to a declaration to that effect.

115. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

B. Declaration of Invalidity

116. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 115 as if set forth in full herein.

117. An actual controversy exists between Dell and MicroUnity concerning the validity of the '482 patent by virtue of MicroUnity's assertion of infringement of that patent by Dell, which assertion Dell denies.

118. The '482 patent is invalid under the provisions of Title 35, United States Code, including, *inter alia*, Sections 102, 103, and/or 112 thereof, and Dell is entitled to a declaration to that effect.

119. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

COUNT SEVEN - U.S. PATENT NO. 6,643,765 B1

A. Declaration of Noninfringement

120. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 119 as if set forth in full herein.

121. An actual and justiciable controversy exists between Dell and MicroUnity with respect to the noninfringement of the '765 patent. Absent a declaration of noninfringement, MicroUnity will continue to wrongfully assert the '765 patent against Dell, and thereby cause Dell irreparable injury and damage.

122. Dell has not infringed the '765 patent, either directly or indirectly, literally or under the doctrine of equivalents, or willfully, and is entitled to a declaration to that effect.

123. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

B. Declaration of Invalidity

124. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 123 as if set forth in full herein.

125. An actual controversy exists between Dell and MicroUnity concerning the validity of the '765 patent by virtue of MicroUnity's assertion of infringement of that patent by Dell, which assertion Dell denies.

126. The '765 patent is invalid under the provisions of Title 35, United States Code, including, *inter alia*, Sections 102, 103, and/or 112 thereof, and Dell is entitled to a declaration to that effect.

127. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

C. Declaration of Unenforceability

128. Intel realleges and incorporates by reference the allegations set forth in paragraphs 1 through 127 as if set in full herein.

129. An actual controversy exists between Intel and Microunity concerning the enforceability of the '765 patent by virtue of Microunity's assertion of infringement of that patent by Intel, which assertion Intel denies.

130. The '765 patent is unenforceable due to inequitable conduct committed by Microunity as more specifically described above, and Intel is entitled to a declaration to that effect.

131. This is an exceptional case entitling Intel to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

COUNT EIGHT - U.S. PATENT NO. 5,630,096

A. Declaration of Noninfringement

132. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 131 as if set forth in full herein.

133. An actual and justiciable controversy exists between Dell and MicroUnity with respect to the noninfringement of the '096 patent. Absent a declaration of noninfringement, MicroUnity will continue to wrongfully assert the '096 patent against Dell, and thereby cause Dell irreparable injury and damage.

134. Dell has not infringed the '096 patent, either directly or indirectly, literally or under the doctrine of equivalents, or willfully, and is entitled to a declaration to that effect.

135. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

B. Declaration of Invalidity

136. Dell realleges and incorporates by reference the allegations set forth in paragraphs 1 through 135 as if set forth in full herein.

137. An actual controversy exists between Dell and MicroUnity concerning the validity of the '096 patent by virtue of MicroUnity's assertion of infringement of that patent by Dell, which assertion Dell denies.

138. The '096 patent is invalid under the provisions of Title 35, United States Code, including, *inter alia*, Sections 102, 103, and/or 112 thereof, and Dell is entitled to a declaration to that effect.

139. This is an exceptional case entitling Dell to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

C. Declaration of Unenforceability

140. Intel realleges and incorporates by reference the allegations set forth in paragraphs 1 through 139 as if set in full herein.

141. An actual controversy exists between Intel and Microunity concerning the enforceability of the '096 patent by virtue of Microunity's assertion of infringement of that patent by Intel, which assertion Intel denies.

142. The '096 patent is unenforceable due to inequitable conduct committed by Microunity as more specifically described above, and Intel is entitled to a declaration to that effect.

143. This is an exceptional case entitling Intel to an award of its attorneys' fees incurred in connection with this action pursuant to 35 U.S.C. § 285.

PRAYER

WHEREFORE, Dell prays for judgment as follows:

- A. For dismissal of MicroUnity's Complaint with prejudice, and that MicroUnity shall take nothing against Dell by the Complaint;
- B. For a judgment and declaration that the patents in suit, and each and every claim thereof, are invalid and/or not infringed by Dell;
- C. For a judgment and declaration that the '765 patent, '356 patent and '096 patent are unenforceable due to inequitable conduct;
- D. For a judgment, pursuant to 35 U.S.C. § 285, that MicroUnity's conduct renders this case exceptional and that Dell be awarded its attorneys' fees and costs;
- E. For Dell's costs of suit incurred herein; and

F. For such other and further relief as the Court deems just and proper.

DATED: February 25, 2005

Respectfully submitted,

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ATTORNEYS FOR DEFENDANT DELL INC.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served this the 25th day of February, 2005 on the following by e-filing and email:

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